

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

Case No. 14-CV-03101-VEB

KAREN BRALENS,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In November of 2008, Plaintiff Karen Bralens applied for Supplemental Security Income (“SSI”) benefits and Disability Insurance Benefits (“DIB”) under the Social Security Act. The Commissioner of Social Security denied the applications.

1 Plaintiff, represented by D. James Tree, Esq., commenced this action seeking
2 judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405
3 (g) and 1383 (c)(3). The parties consented to the jurisdiction of a United States
4 Magistrate Judge. (Docket No. 7).

5 On July 1, 2015, the Honorable Rosanna Malouf Peterson, Chief United States
6 District Judge, referred this case to the undersigned pursuant to 28 U.S.C. §
7 636(b)(1)(A) and (B). (Docket No. 29).

8 9 **II. BACKGROUND**

10 The procedural history may be summarized as follows:

11 Plaintiff applied for SSI benefits and DIB on November 30, 2008, alleging
12 disability since August 1, 2002. (T at 141-43, 144-50).¹ The applications were denied
13 initially and on reconsideration and Plaintiff requested a hearing before an
14 Administrative Law Judge ("ALJ"). On May 10, 2011, a hearing was held before ALJ
15 Marie Palachuk. (T at 51). Plaintiff appeared with an attorney and testified. (T at 64-
16 71). The ALJ also received testimony from Deborah Nelson-Lapoint, a vocational
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19 ¹ Citations to ("T") refer to the administrative record at Docket No. 11.

1 expert (T at 73-77), Harvey Alpern, a medical expert (T at 55-58), and Dr. Walter
2 Scott Mabee, a medical expert (T at 59-63).

3 On May 24, 2011, the ALJ issued a written decision denying the applications
4 and finding that Plaintiff was not entitled to benefits. (T at 18-39). The Appeals
5 Council denied Plaintiff's request for review on August 21, 2012. (T at 1-6).

6 Plaintiff sought review in the United States District Court for the Eastern
7 District of Washington. On August 30, 2013, the Honorable Cynthia Imbrogno,
8 United States Magistrate Judge, approved the parties' Stipulation for a remand
9 pursuant to sentence four of 42 U.S.C. § 405 (g). (T at 650). The Appeals Council
10 remanded the matter for further proceedings, including a second administrative
11 hearing, on October 9, 2013. (T at 656-58).

12 A second administrative hearing was held on February 27, 2014, before ALJ
13 Kimberly Boyce. (T at 543). Plaintiff appeared with her attorney and testified. (T at
14 556-600). The ALJ received testimony from Trevor Duncan, a vocational expert. (T
15 at 601-609).

16 On May 23, 2014, ALJ Boyce issued a written decision denying the applications
17 for benefits. (T at 486-511).

18 On July 25, 2014, Plaintiff, acting by and through her counsel, timely
19 commenced this action by filing a Complaint in the United States District Court for
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1 the Eastern District of Washington. (Docket No. 4). The Commissioner interposed an
2 Answer on September 30, 2014. (Docket No. 10).

3 Plaintiff filed a motion for summary judgment on February 23, 2015. (Docket
4 No. 17). The Commissioner moved for summary judgment on May 27, 2015. (Docket
5 No. 26). Plaintiff filed a reply brief on June 10, 2015. (Docket No. 28).

6 For the reasons set forth below, the Commissioner's motion is granted and
7 Plaintiff's motion is denied.

8 9 **III. DISCUSSION**

10 **A. Sequential Evaluation Process**

11 The Social Security Act ("the Act") defines disability as the "inability to engage
12 in any substantial gainful activity by reason of any medically determinable physical
13 or mental impairment which can be expected to result in death or which has lasted or
14 can be expected to last for a continuous period of not less than twelve months." 42
15 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall
16 be determined to be under a disability only if any impairments are of such severity
17 that a plaintiff is not only unable to do previous work but cannot, considering
18 plaintiff's age, education and work experiences, engage in any other substantial work
19 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 Thus, the definition of disability consists of both medical and vocational components.
2 *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). The
3 Commissioner has established a five-step sequential evaluation process for
4 determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one
5 determines if the person is engaged in substantial gainful activities. If so, benefits are
6 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker
7 proceeds to step two, which determines whether plaintiff has a medically severe
8 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
9 416.920(a)(4)(ii). If plaintiff does not
10 have a severe impairment or combination of impairments, the disability claim is
11 denied. If the impairment is severe, the evaluation proceeds to the third step, which
12 compares plaintiff's impairment with a number of listed impairments acknowledged
13 by the Commissioner to be so severe as to preclude substantial gainful activity. 20
14 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If
15 the impairment meets or equals one of the listed impairments, plaintiff is conclusively
16 presumed to be disabled. If the impairment is not one conclusively presumed to be
17 disabling, the evaluation proceeds to the fourth step, which determines whether the
18 impairment prevents plaintiff from performing work which was performed in the past.
19 If a plaintiff is able to perform previous work he or she is deemed not disabled. 20

1 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's residual
2 functional capacity (RFC) is considered. If plaintiff cannot perform past relevant
3 work, the fifth and final step in the process determines whether plaintiff is able to
4 perform other work in the national economy in view of plaintiff's residual functional
5 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
6 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

7 The initial burden of proof rests upon plaintiff
8 to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*,
9 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.
10 1999). The initial burden is met once plaintiff establishes that a mental or physical
11 impairment prevents the performance of previous work. The burden then shifts, at step
12 five, to the Commissioner to show that (1) plaintiff can perform other substantial
13 gainful activity and (2) a "significant number of jobs exist in the national economy"
14 that plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

15 **B. Standard of Review**

16 Congress has provided a limited scope of judicial review of a Commissioner's
17 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision, made
18 through an ALJ, when the determination is not based on legal error and is supported
19 by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985);

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). “The [Commissioner’s]
2 determination that a plaintiff is not disabled will be upheld if the findings of fact are
3 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
4 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,
5 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a
6 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989).
7 Substantial evidence “means such evidence as a reasonable mind might accept as
8 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401
9 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]
10 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*, 348
11 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole,
12 not just the evidence supporting the decision of the Commissioner. *Weetman v.*
13 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,
14 526 (9th Cir. 1980)).

15 It is the role of the Commissioner, not this Court, to resolve conflicts in
16 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
17 interpretation, the Court may not substitute its judgment for that of the Commissioner.
18 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
19 Nevertheless, a decision supported by substantial evidence will still be set aside if the

1 proper legal standards were not applied in weighing the evidence and making the
2 decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th
3 Cir. 1987). Thus, if there is substantial evidence to support the administrative findings,
4 or if there is conflicting evidence that will support a finding of either disability or
5 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812
6 F.2d 1226, 1229-30 (9th Cir. 1987).

7 **C. Commissioner's Decision**

8 In her decision following the second administrative hearing, which constitutes
9 the Commissioner's final decision in this matter, ALJ Boyce determined that Plaintiff
10 had not engaged in substantial gainful activity since August 1, 2002 (the alleged onset
11 date) and met the insured status requirements of the Social Security Act through
12 March 31, 2006. (T at 493). The ALJ found that Plaintiff's affective disorder,
13 personality disorder, anxiety disorder, and alcohol dependence were "severe"
14 impairments under the Act. (Tr. 493).

15 However, the ALJ concluded that Plaintiff did not have an impairment or
16 combination of impairments that met or medically equaled one of the impairments set
17 forth in the Listings. (T at 495).

18 The ALJ determined that Plaintiff retained the residual functional capacity
19 ("RFC") to perform light work, as defined in CFR § 416.967 (b), with the following
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1 limitations: she can stand and walk for about 6 hours and sit for more than 6 hours
2 with normal breaks; she can lift/carry/push/pull within light exertional limits; she can
3 never climb ladders, ropes or scaffolds; she can occasionally climb ramps and stairs;
4 she can balance, stoop, kneel, crouch, and crawl; she can perform work that does not
5 involve unprotected heights or concentrated exposure to hazards; she can
6 understand/remember/and carry out unskilled, routine, and repetitive work that
7 requires no more than occasional contact with supervisors; she can work in proximity
8 to co-workers, but not in a team or cooperative effort; and she must work in a position
9 that does not require direct service to the general public. (T at 496).

10 The ALJ concluded that Plaintiff could perform her past relevant work as an
11 agricultural produce sorter. (T at 503). In the alternative, considering Plaintiff's age
12 (45 on the alleged onset date), education (limited), work experience, and residual
13 functional capacity, the ALJ determined that there were jobs that exist in significant
14 numbers that Plaintiff can perform. (T at 503-504). As such, the ALJ concluded that
15 Plaintiff was not disabled, as defined under the Social Security Act, between August
16 1, 2002 (the alleged onset date) and May 23, 2014 (the date of the decision) and was
17 therefore not entitled to benefits. (Tr. 504).

18 **D. Plaintiff's Arguments**

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1 Plaintiff contends that the Commissioner's decision should be reversed. She
2 offers two (2) main arguments. First, she contends that the ALJ did not properly weigh
3 the medical evidence. Second, Plaintiff challenges the ALJ's credibility
4 determination. This Court will address each argument in turn.

6 IV. ANALYSIS

7 A. Medical Evidence

8 In disability proceedings, a treating physician's opinion carries more weight
9 than an examining physician's opinion, and an examining physician's opinion is given
10 more weight than that of a non-examining physician. *Benecke v. Barnhart*, 379 F.3d
11 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the
12 treating or examining physician's opinions are not contradicted, they can be rejected
13 only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
14 opinion can only be rejected for "specific" and "legitimate" reasons that are supported
15 by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th
16 Cir. 1995).

17 An ALJ satisfies the "substantial evidence" requirement by "setting out a
18 detailed and thorough summary of the facts and conflicting clinical evidence, stating
19 his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995,

1 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
2 “The ALJ must do more than state conclusions. He must set forth his own
3 interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

4 **1. Dr. Sabry**

5 On March 21, 2007, Dr. Fady Sabry, Plaintiff’s treating physician, completed a
6 physical evaluation. He opined that Plaintiff was limited to sedentary work. (T at
7 272). On September 25, 2008, Dr. Sabry completed another physical evaluation,
8 wherein he rendered the same opinion. (T at 281).

9 The ALJ gave Dr. Sabry’s opinions little weight, finding that neither the
10 evaluations nor the treatment notes contain objective findings consistent with the
11 assessed limitation to sedentary work. In addition, the ALJ found Dr. Sabry’s
12 assessment inconsistent with the overall record. (T at 494).

13 This Court finds the ALJ’s decision supported by substantial evidence. Dr.
14 Sabry’s assessments were conclusory and not accompanied by supporting evidence or
15 explanatory details. The ALJ is not obliged to accept a treating source opinion that is
16 “brief, conclusory and inadequately supported by clinical findings.” *Lingenfelter v.*
17 *Astrue*, 504 F.3d 1028, 1044-45 (9th Cir. 2007) (citing *Thomas v. Barnhart*, 278 F.3d
18 947, 957 (9th Cir. 2002)). Moreover, the assessments were internally contradictory.
19 For example, in the March 2007 evaluation, Dr. Sabry limited Plaintiff to sedentary

1 work, but reported that her hypertension was mild and would not significantly
2 interfere with her ability to perform basic work-related activities. (T at 272). The
3 physician also did not indicate that any of Plaintiff's other conditions would limit her
4 ability to perform basic work-related activities. (T at 272). The September 2008
5 evaluation contains Dr. Sabry's opinion that Plaintiff was limited to sedentary work,
6 but documents physical examination findings all within normal limits. (T at 280). In
7 treatment notes from September and November 2008, Dr. Sabry described Plaintiff's
8 diabetes as "controlled" and characterized her hypertension as "benign." (T at 292,
9 294). The ALJ acted within her discretion in discounting Dr. Sabry's opinions based
10 on this discrepancy. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
11 2005)(finding that "discrepancy" between treatment notes and opinion was "a clear
12 and convincing reason for not relying on the doctor's opinion regarding" the
13 claimant's limitations).

14 In addition, the ALJ reasonably concluded that Dr. Sabry's conclusion was
15 inconsistent with the overall record, including the conservative treatment history. For
16 example, although she is treated for hypertension, the evidence does not support a
17 finding that this condition limits Plaintiff's ability to work. Plaintiff's chest pain
18 required only conservative treatment (i.e. blood pressure medication) (T at 928-29)
19 and treatment notes contained little mention of chest pain and reported that Plaintiff's

1 blood pressure was well-controlled. (T at 950, 959, 998). The record indicated that
2 Plaintiff's hepatitis C responded well to treatment. (T at 299, 470, 493). *See Johnson*
3 *v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)(finding that conservative treatment for
4 back injury was a clear and convincing reason for discounting testimony that the
5 claimant was disabled).

6 Although Plaintiff asserts that Dr. Sabry's opinion combines the effects of her
7 mental and physical limitations, this is not supported by the record. In the March 2007
8 evaluation, Dr. Sabry referenced Plaintiff's depression, but did not indicate that it
9 caused any interference with her ability to perform basic work-related activities. (T at
10 272). He did not even mention depression in the September 2008 assessment.(T at
11 281). This Court finds no error with regard to the ALJ's decision to discount Dr.
12 Sabry's assessment.

13 **2. Step Two Analysis**

14 At step two of the sequential evaluation process, the ALJ must determine
15 whether the claimant has a "severe" impairment. See 20 C.F.R. §§ 404.1520(c),
16 416.920(c). The fact that a claimant has been diagnosed with and treated for a
17 medically determinable impairment does not necessarily mean the impairment is
18 "severe," as defined by the Social Security Regulations. *See, e.g., Fair v. Bowen*, 885
19 F.2d 597, 603 (9th Cir. 1989); *Key v. Heckler*, 754 F.2d 1545, 1549-50 (9th Cir. 1985).

1 To establish severity, the evidence must show the diagnosed impairment significantly
2 limits a claimant's physical or mental ability to do basic work activities for at least 12
3 consecutive months. 20 C.F.R. § 416.920(c).

4 The step two analysis is a screening device designed to dispose of *de minimis*
5 complaints. *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “[A]n impairment
6 is found not severe . . . when medical evidence establishes only a slight abnormality
7 or a combination of slight abnormalities which would have no more than a minimal
8 effect on an individual’s ability to work.” *Yuckert v. Bowen*, 841 F.2d 303 (9th Cir.
9 1988) (quoting SSR 85-28). The claimant bears the burden of proof at this stage and
10 the “severity requirement cannot be satisfied when medical evidence shows that the
11 person has the ability to perform basic work activities, as required in most jobs.” SSR
12 85-28

13 The ALJ did not specifically list any severe physical impairments. (T at 493).
14 Plaintiff challenges this finding, noting extensive evidence of Plaintiff’s various
15 physical impairments (arthritis, chronic liver disease, hypertension, coronary artery
16 disease, and diabetes). Indeed, it is difficult to determine why the ALJ did not find
17 any severe physical impairments, especially since she found that Plaintiff was limited
18 to light work. (T at 496). For this reason, however, this Court finds any error by the
19 ALJ in this regard harmless. Indeed, Plaintiff has not established that changing the
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1 step two finding would change the ultimate result. The ALJ clearly considered the
2 evidence of Plaintiff's physical limitations and incorporated limitations into the
3 residual functional capacity determination, which found that Plaintiff was limited to
4 light work. (T at 496). In other words, even assuming *arguendo* that the ALJ erred in
5 finding that Plaintiff's physical impairments were non-severe, any error in that regard
6 was harmless because the ALJ considered these impairments when determining
7 Plaintiff's RFC. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).

8 **3. Dr. Dougherty**

9 In August of 2009, Dr. Roland Dougherty performed a consultative
10 psychological evaluation. He diagnosed bipolar one mood disorder (depressive
11 phase), PTSD (in partial remission), polysubstance abuse (in remission), marijuana
12 dependence (in remission), alcohol abuse (in remission), and borderline personality
13 disorder. (T at 349). Dr. Dougherty assigned a Global Assessment of Functioning
14 ("GAF")² score of 50 (T at 349), which is indicative of serious impairment in social,
15 occupational or school functioning. *Onorato v. Astrue*, No. CV-11-0197, 2012 U.S.
16 Dist. LEXIS 174777, at *11 n.3 (E.D.Wa. Dec. 7, 2012). He described Plaintiff's
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18 ² "A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment." *Vargas v. Lambert*, 159 F.3d 1161,
20 1164 n.2 (9th Cir. 1998).

1 prognosis as “[f]air and dependent on her use of mental health resources.” (T at 349).
2 Dr. Dougherty opined that Plaintiff’s social skills were “good,” her thinking was
3 “rational and goal directed,” and noted that she had worked successfully in retail in
4 the past. (T at 349).

5 Plaintiff contends that the ALJ did not properly consider Dr. Dougherty’s
6 opinion. However, the ALJ discussed the evaluation in detail and noted that the
7 doctor’s opinion was inconsistent with the level of restriction alleged by Plaintiff. (T
8 at 498-99). Moreover, Dr. Dougherty’s assessment was, in general, supportive of the
9 ALJ’s RFC determination. For example, he found no evidence of psychomotor
10 agitation or retardation. Plaintiff was cooperative, with normal, well-oriented speech.
11 (T at 347). She denied memory problems and had no difficulty following the
12 conversation. (T at 348). She is independent in self-care. (T at 349). The ALJ’s
13 assessment of Plaintiff’s mental limitations is supported by substantial evidence,
14 including Dr. Dougherty’s assessment, as well as the State Agency review consultant
15 opinions and other evidence outlined below. This Court finds no error with regard to
16 the ALJ’s consideration of Dr. Dougherty’s opinion.

17 **4. State Agency Psychologists**

18 In September of 2013, Dr. Michael Brown, a non-examining State Agency
19 review psychologist, opined that Plaintiff was not significantly limited with regard to
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1 her ability to remember locations and work-like procedures and could understand,
2 remember, and carry out simple tasks. (T at 668). Dr. Brown concluded that Plaintiff's
3 ability to carry out very short and simple instructions was not significantly limited,
4 but that she was moderately limited with regard to her ability to maintain attention and
5 concentration for extended periods and perform activities within a schedule, maintain
6 regular attendance, and be punctual within customary tolerances. (T at 668). In the
7 narrative portion of his report, Dr. Brown opined that Plaintiff could sustain adequate
8 concentration for 2 hour periods and should be able to complete her work a majority
9 of the time within customary tolerances. (T at 668). He assessed moderate limitation
10 with respect to Plaintiff's ability to interact appropriately with the general public, but
11 found that she could accepted instructions from supervisors, have occasional,
12 superficial contact with co-workers, and tolerate minimal contact with the general
13 public. (T at 668-69).

14 In October of 2013, Dr. Thomas Clifford, another State Agency review
15 consultant, completed a mental RFC assessment. Dr. Clifford opined that Plaintiff
16 could understand, remember, and carry out simple tasks. (T at 694). He assessed
17 moderate limitations with regard to Plaintiff's ability to maintain attention and
18 concentration for extended periods and perform activities within a schedule, maintain
19 regular attendance, and be punctual within customary tolerances. (T at 694). In the

1 narrative portion of his report, Dr. Clifford opined that Plaintiff could sustain adequate
2 concentration for 2 hour periods and should be able to complete her work a majority
3 of the time within customary tolerances. (T at 695). Dr. Clifford also assessed
4 moderate limitation with respect to Plaintiff's ability to interact appropriately with the
5 general public, but found that she could accepted instructions from supervisors, have
6 occasionally, superficial contact with co-workers, and tolerate minimal contact with
7 the general public. (T at 695).

8 The ALJ gave these assessments significant weight and incorporated their
9 narrative conclusions into the RFC determination. (T at 501). Plaintiff contends that
10 the ALJ failed to give sufficient weight to the "moderate limitations" assessed by the
11 review consultants. However, the ALJ properly relied upon and incorporated the
12 narrative written by the evaluators, rather than the limitations noted in the "Section I"
13 worksheet. The Program Operations Manual System (POMS), an internal Social
14 Security Administration document, provides, in pertinent part, that "[i]t is the
15 narrative written by the psychiatrist or psychologist in section III . . . that adjudicators
16 are to use as the assessment of RFC." "The POMS does not have the force of law, but
17 it is persuasive authority." *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1005
18 (9th Cir. 2006)).

1 Sean Mee, another State Agency review consultant, completed an assessment
2 in August of 2009, in which he opined that Plaintiff could understand, remember, and
3 carry out routine and well-learned detailed tasks. (T at 352). He also concluded that
4 Plaintiff would occasionally need a “slowed pace” due to psychiatric symptoms, but
5 retained the ability to carry out “non-speeded work tasks.” (T at 352). The ALJ
6 afforded greater weight to the opinions of Dr. Brown and Dr. Clifford, which were
7 more recent and included more evidence. (T at 502). This assessment was within the
8 ALJ’s discretion. As outlined in this Decision and Order, the overall medical record,
9 including the opinions of Dr. Dougherty, Dr. Brown, and Dr. Clifford, as well as the
10 treatment history, sufficiently supported the ALJ’s assessment of Plaintiff’s physical
11 and mental RFC.

12 **5. Other Source Evidence/Dr. Mabee**

13 In January of 2005, Christopher Clark, a mental health counselor, completed a
14 psychological/psychiatric evaluation. Mr. Clark assessed mild limitations with regard
15 to Plaintiff’s ability to understand, remember, and follow simple instructions and
16 perform routine tasks and moderate limitations with respect to Plaintiff’s ability to
17 learn new tasks, exercise judgment, and make decisions. (T at 264). He also opined
18 that Plaintiff would have moderate limitation with regard to relating appropriately to
19 co-workers, supervisors, and in public contacts. (T at 264). Mr. Clark assessed

1 marked limitations as to Plaintiff's ability to respond appropriately to and tolerate the
2 pressures and expectations of a normal work setting. (T at 264).

3 In September of 2008, Russell Anderson, a social worker, completed a
4 psychological/psychiatric evaluation. Mr. Anderson assessed mild limitation as to
5 Plaintiff's ability to understand, remember, and follow simple instructions, with
6 moderate limitations with respect to Plaintiff's ability to learn new tasks, exercise
7 judgment and make decisions, and perform routine tasks. (T at 286). He also opined
8 that Plaintiff would have moderate limitations with respect to her ability to relate
9 appropriately to co-workers and supervisors, interact appropriately in public contacts,
10 and respond appropriately to and tolerate the pressure and expectations of a normal
11 work setting. (T at 286).

12 Dr. Scott Mabee, a medical expert, who testified at the first administrative
13 hearing, also opined that Plaintiff had moderate limitations in her ability to maintain
14 attention and concentration for extended periods, maintain regular attendance, work
15 at a consistent pace without interference from psychologically-based symptoms, and
16 deal with supervisors and co-workers without exhibiting significant behavioral issues.
17 (T at 62).

18 In evaluating a claim, the ALJ must consider evidence from the claimant's
19 medical sources. 20 C.F.R. §§ 404.1512, 416.912. Medical sources are divided into

1 two categories: “acceptable” and “not acceptable.” 20 C.F.R. § 404.1502. Acceptable
2 medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1502.
3 Medical sources classified as “not acceptable” (also known as “other sources”) include
4 nurse practitioners, therapists, licensed clinical social workers, and chiropractors. SSR
5 06-03p. The opinion of an acceptable medical source is given more weight than an
6 “other source” opinion. 20 C.F.R. §§ 404.1527, 416.927. For example, evidence from
7 “other sources” is not sufficient to establish a medically determinable impairment.
8 SSR 06-03p. However, “other source” opinions must be evaluated on the basis of
9 their qualifications, whether their opinions are consistent with the record evidence, the
10 evidence provided in support of their opinions and whether the other source is “has a
11 specialty or area of expertise related to the individual's impairment.” *See* SSR 06-03p,
12 20 CFR §§404.1513 (d), 416.913 (d). The ALJ must give “germane reasons” before
13 discounting an “other source” opinion. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.
14 1993).

15 The ALJ discounted Mr. Clark’s findings, noting that he reviewed few medical
16 records and did not record any mental status findings. The ALJ found Mr. Anderson’s
17 opinion generally consistent with the overall record. (T at 502). This Court finds the
18 ALJ’s decision supported by substantial evidence. The ALJ incorporated some, but
19 not all, of the limitations identified by these “other sources” (and Dr. Mabey – who is

1 a non-examining physician) in the RFC determination. For example, the ALJ found
2 that Plaintiff could have no more than occasional contact with supervisors, work in
3 proximity to co-workers, but not in a team or cooperative effort, and perform work in
4 which direct service to the general public is not required. (T at 496).

5 Plaintiff argues that the ALJ should have weighed the evidence differently and
6 given more weight to the marked and moderate limitations assessed by the other
7 source. However, if the evidence supports more than one rational interpretation, this
8 Court may not substitute its judgment for that of the Commissioner. *Allen v. Heckler*,
9 749 F.2d 577, 579 (9th Cir. 1984). If there is substantial evidence to support the
10 administrative findings, or if there is conflicting evidence that will support a finding
11 of either disability or nondisability, the Commissioner's finding is conclusive.
12 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's finding
13 was supported by substantial evidence and must therefore be sustained. *See Tackett*
14 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably
15 supports the Commissioner's decision, the reviewing court must uphold the decision
16 and may not substitute its own judgment).

17 **B. Credibility**

18 A claimant's subjective complaints concerning his or her limitations are an
19 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
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1 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
2 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
3 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
4 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
5 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings
6 are insufficient: rather the ALJ must identify what testimony is not credible and what
7 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
8 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

9 In this case, the ALJ found that Plaintiff's medically determinable impairments
10 could reasonably be expected to cause some of the alleged symptoms, but that her
11 statements concerning the intensity, persistence, and limiting effects of the symptoms
12 were not fully credible. (T at 497).

13 Plaintiff alleges that the ALJ was biased against her and engaged in aggressive
14 and unfair questioning. This Court finds this argument unavailing. "ALJs are
15 presumed to be unbiased." *Valentine v. Comm'r Social Sec. Admin.*, 574 F.3d 685, 690
16 (9th Cir. 2009) (quoting *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)).
17 This presumption "can be rebutted by a showing of conflict of interest or some other
18 specific reason for disqualification. . . . But expressions of impatience, dissatisfaction,
19 annoyance, and even anger, that are within the bounds of what imperfect men and

1 women sometimes display[,] do not establish bias.” *Valentine*, 574 F.3d at 690
2 (quoting *Rollins*, 261 F.3d at 857-58). To succeed on a bias argument, the claimant
3 must show that “the ALJ's behavior, in the context of the whole case, was ‘so extreme
4 as to display clear inability to render fair judgment.’” *Bayliss*, 427 F.3d at 1215.

5 In this case, there was no showing of any conflict of interest or other specific
6 reason for disqualification. During the administrative hearing, the ALJ asked Plaintiff
7 some tough questions and there appeared to be difficulties with the videoconferencing,
8 which was a source of some frustration. (T at 574, 577). However, this Court finds
9 that the questioning was not so extremely aggressive as to display a clear inability to
10 render a fair judgment. *See Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir.
11 2003)(noting ALJ’s affirmative duty to “conscientiously probe into, inquire of, and
12 explore for all the relevant facts”).

13 This Court further finds that the ALJ’s credibility assessment is supported by
14 legally sufficient evidence. Plaintiff made inconsistent statements regarding her
15 alcohol use (T at 497-98) and claimed a detoxification treatment was related to a
16 mental health breakdown, although the ALJ cited evidence indicating that the
17 treatment was, in fact, for alcohol abuse, suggesting Plaintiff’s explanation was less
18 than truthful (T at 497, 981-86). Plaintiff made contradictory statements to various
19 providers regarding the efficacy of Prozac in treating her depression. (T at 499). The
20

1 ALJ noted Plaintiff's lack of mental health treatment. Although the lack of treatment
2 cannot form the sole basis for rejecting claims of disabling symptoms, an ALJ may
3 consider a claimant's unexplained or inadequately explained failure to seek treatment.
4 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)(citation omitted). Here,
5 the ALJ considered Plaintiff's reasons for such lack of treatment, and found those
6 reasons unpersuasive. (T at 500).

7 Plaintiff was the primary caretaker for her elderly parents from 2003 through
8 March 2009, stopping when her mother passed away. (T at 264, 284, 345, 500). Mr.
9 Clark, the mental health counselor, opined that Plaintiff's caretaking duties interfered
10 with her ability to work. (T at 265, 502). The fact that a claimant is unable to work
11 for reasons other than the alleged impairments is a valid reason for the ALJ to discount
12 the claimant's credibility. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001).

13 Lastly, the ALJ reasonably discounted Plaintiff's allegations as inconsistent
14 with her activities of daily living, which included research into her medical conditions
15 (T at 572, 587), as well as the ability to manage money (T at 899), engage in a weekly
16 activity with a friend (T at 1039), and read a book. (T at 977). When assessing a
17 claimant's credibility, the ALJ may employ "ordinary techniques of credibility
18 evaluation." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 n.3 (9th Cir.
19 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)). Activities of
20

1 daily living are a relevant consideration in assessing a claimant's credibility. *See*
2 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Although the claimant does
3 not need to "vegetate in a dark room" to be considered disabled, *Cooper v. Brown*,
4 815 F.2d 557, 561 (9th Cir. 1987), the ALJ may discount a claimant's testimony to the
5 extent his or her activities of daily living "contradict claims of a totally debilitating
6 impairment." *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2011).

7 Where, as here, substantial evidence supports the ALJ's credibility
8 determination, this Court may not overrule the Commissioner's interpretation even if
9 "the evidence is susceptible to more than one rational interpretation." *Magallanes*, 881
10 F.2d 747, 750 (9th Cir. 1989); *see also Morgan v. Commissioner*, 169 F.3d 595, 599
11 (9th Cir. 1999)("[Q]uestions of credibility and resolutions of conflicts in the testimony
12 are functions solely of the [Commissioner].").

13 14 V. CONCLUSION

15 After carefully reviewing the administrative record, this Court finds substantial
16 evidence supports the Commissioner's decision, including the objective medical
17 evidence and supported medical opinions. It is clear that the ALJ thoroughly examined
18 the record, afforded appropriate weight to the medical evidence, including the
19 assessments of the examining medical providers and the non-examining consultants,

1 and afforded the subjective claims of symptoms and limitations an appropriate weight
2 when rendering a decision that Plaintiff is not disabled. This Court finds no reversible
3 error and because substantial evidence supports the Commissioner's decision, the
4 Commissioner's motion for summary judgment is GRANTED and Plaintiff's motion
5 for judgment summary judgment is DENIED.

6
7 **VI. ORDERS**

8 IT IS THEREFORE ORDERED that:

9 Plaintiff's motion for summary judgment, Docket No. 17, is DENIED.

10 The Commissioner's motion for summary judgment, Docket No. 26, is
11 GRANTED.

12 The District Court Executive is directed to file this Order, provide copies to
13 counsel, enter judgment in favor of the Commissioner, and CLOSE this case.

14 DATED this 27th day of November, of 2015.

15 /s/Victor E. Bianchini
16 VICTOR E. BIANCHINI
17 UNITED STATES MAGISTRATE JUDGE
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